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[REDACTED]

FILE: [REDACTED]  
MSC-06-027-11886

Office: HARTFORD

Date: **JUL 03 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, Hartford. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that the decision was rendered against the weight of the evidence; the affidavits the applicant submitted were not given due consideration; the settlement agreement was not followed in that the denial was based solely on the fact that the applicant submitted only affidavits; and the director failed to consider the passage of time and the attendant difficulty of obtaining documents.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant’s claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on October 27, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed only the following address: [REDACTED] Bridgeport 06605. The applicant failed to indicate when she began residing at the [REDACTED] address, but she indicated that she continued living there to the present time. The applicant’s failure to specifically indicate that she began residing at the [REDACTED] address prior to January 1, 1982 casts some doubt on the applicant’s claim to have resided in the United States throughout the requisite period.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided a Verification of Pupil Registration from the New York City Public Schools dated September 7, 1982. This document lists the applicant as the pupil and indicates that the applicant was currently registered at P.S. 191 elementary school in New York. The document indicates that there was no attendance data for the applicant at the school. The address listed for the applicant was [REDACTED] t. This information is inconsistent with the applicant’s Form I-687, where she listed only the [REDACTED] address. This inconsistency casts doubt on the applicant’s claim to have resided in the United States during the requisite period.

The applicant also provided a letter addressed to her mother by an individual named [REDACTED] and dated October 21, 1985. This letter indicates that the applicant and her mother were residing in the United States at the time the letter was written. The applicant also attached a photocopy of an envelope including a postmark dated October 22, 1985. The envelope is addressed to the applicant at [REDACTED], [REDACTED], in New York City. This information is inconsistent with the applicant's Form I-687, where she listed only the [REDACTED] address. This inconsistency casts doubt on the applicant's claim to have resided in the United States during the requisite period.

Lastly, the applicant provided a notarized declaration from [REDACTED]. The affiant stated that he met the applicant on [REDACTED] in Brooklyn in January 1982 through the applicant's sister. This affidavit fails to include detail regarding the duration of the applicant's residence in the United States and the affiant's frequency of contact with her during the requisite period. Because of its lack of detail, this affidavit constitutes only limited evidence that the applicant resided in the United States in January 1982.

In denying the application the director noted that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that the decision was rendered against the weight of the evidence; the affidavits the applicant submitted were not given due consideration; the settlement agreement was not followed in that the denial was based solely on the fact that the applicant submitted only affidavits; and the director failed to consider the passage of time and the attendant difficulty of obtaining documents. It is noted that the director's decision does not appear to have been based solely on the fact that the applicant submitted only affidavits. In fact, the applicant submitted other documents in addition to affidavits.

In summary, the applicant has provided contemporaneous evidence that is inconsistent with her Form I-687 application, and has submitted an affidavit that only clearly concerns one month during the requisite period. The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the contradictions between the applicant's Form I-687 and the documents she submitted, and given her reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.